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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/672,955	09/26/2003	Eric Ustaris	200209831-1	9436

22879 7590 07/26/2006

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EXAMINER

RIMELL, SAMUEL G

ART UNIT	PAPER NUMBER
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2164

DATE MAILED: 07/26/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/672,955	Applicant(s) USTARIS, ERIC	
	Examiner Sam Rimell	Art Unit 2164	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) 12-14 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-11 and 15-18 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.


SAM RIMELL
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

Response to a Restriction Requirement: Applicant has elected claims 1-11 and 15-18 with traverse. Applicant argues that in making the restriction requirement, the examiner referred to Group II as defining a file server and workstation, but then asserts that this can be a stand-alone workstation. Applicant asserts that this is logically not correct, and is contradictory. In making the restriction requirement, examiner provided two alternate examples of the apparatus, and one of the examples does define the workstation and file server as separate entities. Furthermore, the question raised in making the restriction is not what the apparatus is supposed to look like, but instead, whether the apparatus can perform patentably distinct method steps. Examiner has found that the apparatus is capable of performing patentably distinct method steps (i.e. word processing, numerical calculation, and programming), which supports the basis for making the restriction. Applicant has not traversed or otherwise addressed the distinct method steps recited by the examiner which serve as the basis for the restriction. Accordingly, the restriction is sustained and made final. It is noted that only the restriction is made final, but that the office action is otherwise non-final.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-11 and 15-18 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallach et al. (U.S. Patent 6,292,905).

Claim 1: Reference is made to FIG.5A, The system includes a server (56) which is a file server based on the presence of file content distributed by the server (col. 5, line 3). A file system

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(RAID 80) stored software and data, and is accessible to the file server (56). A client system (68) is also shown. A second server (54) is also shown which is readable as a workstation, by reason that it is a computer capable of manipulating data. As seen in FIG. 5C, if a failure occurs on the server and FIG. 6, the flow of data or software passes through the workstation (54) and then on to the client (68) when a request for such data or software is made by the client. This flow is illustrated by arrow (250) and described at col. 7, lines 55-60.

Claim 2: The RAID system (80) is a centralized collection of data and software which constitutes a database.

Claim 3: The file server (56) is a database server and includes a database (col. 4, lines 25-30).

Claim 4: The workstation (54) is also a server, and thus the system of FIG. 5A includes multiple servers. As seen in FIG. 5C, when the server (56) fails, data transfer loads are distributed to the server (56). Traffic is thus distributed to the servers as needed.

Claim 5: Col. 13, lines 36-38 describe the process where a server implements a heartbeat to determine whether other servers have resumed normal operation.

Claim 6: Col. 4, lines 28-30 describe a protocol referred to as "Netware Directory Services" which constitutes a network file system (NFS) protocol. The AFS system, and combination AFS and NFS system are optionally recited, and thus carry no patentable weight.

Claim 7: See remarks for claim 1. Since the workstation (54) is a computer, it inherently includes control files which control its operation. Client applications (i.e. client software), such as the client operating system are not stored on the server by reason that they are stored on the client.

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Claim 8: As seen in FIG. 5C, when a failure occurs on the server (56), data transfers from (80), through the workstation (54) and on to the client. Since the file system (RAID) is an array of disks, it provides permanent storage of information and programs.

Claim 9: As stated with respect to claim 7, the workstation (54) will inherently include some control files to control its operation. Since the workstation (54) is a server, those control files would necessarily be controlling a server, and thus would constitute server settings.

Claim 10: In FIG. 5A, the interface between the file server (56) and the workstation (54) is the LAN (local area network).

Claim 11: The file system is a RAID (80). The recitation of a SCSI drive is optionally recited and therefore carries no patentable weight.

Claim 15: FIG. 5A illustrates a file server (56) and means for storing client applications and data (RAID 80--a disk system functionally capable of storing data or applications). The means for retrieving the client applications is the client (68) which is functionally capable of requesting and retrieving data and/or applications and executing applications.

Claim 16: The client computer (68) is functionally capable of retrieving applications at any time so requested by a user and executing applications at any time so requested by a user.

Claim 17: FIG. 5A illustrates a computer (68) which includes a CPU. The computer (68) inherently includes volatile memory, such as RAM or cache memory which communicates with the CPU. The CPU (68) is in communication with an external file system (80) and can retrieve information from external file system (80) and execute applications. The CPU can execute client applications by reason that it is located on a client computer.

Claim 18: See remarks for claim 16.

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Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (571) 272-4084.

A handwritten signature in black ink, appearing to read 'Sam Rimell', written in a cursive style.

Sam Rimell
Primary Examiner
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